

1 element to it, which is the witnesses. You know what the
2 documents are, because the documents are all his documents.

3 So, I don't understand why there has to be this
4 suggestion that you have to go out and go beyond what you
5 already know?

6 MR. FRIEDMAN: I don't think they're all our
7 documents. I think they have documents from third parties
8 that they're going to use.

9 JUDGE SIPPEL: Well, do they have the documents
10 that you're going to use in this case?

11 MR. SCHONMAN: We have produced all the relevant
12 documents in response to their requests. Their
13 interrogatory requests, and they've come in with multiple,
14 multiple FOIA requests to which we've provided information.
15 I can assure you, Your Honor, and Mr. Friedman and Mr.
16 Fenske, that there will be no surprises at this hearing.
17 There will be no witnesses that the Bureau puts on that they
18 have not already heard of and had the opportunity to speak
19 to. There will be no documents that we have in our direct
20 case exhibits that they have not already seen. I don't know
21 any other way to try a case.

22 MR. FRIEDMAN: Have we seen all your documents as
23 of yet?

24 MR. SCHONMAN: Your Honor --

25 JUDGE SIPPEL: Hold it just a second. Ask me to

1 ask him. He wants to know what you're holding back. He
2 wants to know what you're holding back.

3 MR. SCHONMAN: Anything that we have not turned
4 over are things that we do not plan on using at trial.
5 There may be confidential letters from witnesses who want to
6 remain confidential. We don't plan on using those witnesses
7 or those documents.

8 JUDGE SIPPEL: In other words, you have a basis
9 under the exemptions from the FOIA disclosure for
10 withholding that information?

11 MR. SCHONMAN: Oh, yes, if documents were
12 withheld, they certainly were withheld under law for
13 appropriate reasons.

14 MR. KELLETT: It's been upheld in the District
15 Court.

16 JUDGE SIPPEL: Well, I can't say I know exactly
17 what you're talking about, because there is so much activity
18 here. Let me ask a question this way. Is there any
19 relevant evidence in the discovery sense that you have that
20 you could voluntarily turn over to Mr. Friedman that you
21 haven't already done so?

22 MR. SCHONMAN: I'm sorry, Your Honor, could you
23 ask that question once again?

24 JUDGE SIPPEL: I'd be happy to. Is there any
25 discovery information, let me just limit it to documents --

1 are there any documents that you have that have been
2 assembled for purposes of this case? I'm talking about in
3 the broad sense, trial preparation work, are there any such
4 documents that you have which could not be voluntarily
5 produced to Mr. Friedman, which, in fact, have not been
6 given to Mr. Friedman?

7 MR. SCHONMAN: Your Honor, there are documents
8 provided by individuals who have requested confidentiality.
9 We do not plan on using those documents at hearing,
10 therefore, we have not turned them over.

11 JUDGE SIPPEL: Well, as I understand the law, you
12 can't turn them over if they claim confidentiality under
13 FOIA.

14 MR. SCHONMAN: We don't plan on using them, so we
15 have not turned them over. To the extent that we have
16 witnesses who have indicated they would testify at trial and
17 to the extent that those individuals have provided
18 documents, we have turned them over.

19 There are not going to be any documents in our
20 direct case that they -- they meaning Mr. Kay and his
21 counsel -- have not already seen.

22 MR. FRIEDMAN: I still don't think that I'm
23 getting an answer to my question, however.

24 JUDGE SIPPEL: If there is a witness privilege, an
25 informant's privilege under FOIA, which, if asserted, you

1 would not be permitted to give them that information.
2 That's my understanding and you seem to be nodding in
3 agreement with that.

4 MR. SCHONMAN: Yes.

5 JUDGE SIPPEL: So, I'm putting all that type of
6 evidence aside. I'm asking, are there any voluntary
7 statements that were given to you that you're not going to
8 use at trial, but for which the informant's privilege is
9 being claimed?

10 MR. SCHONMAN: We'd have to check on that.

11 JUDGE SIPPEL: You have to check on that? Check
12 on that, please.

13 MR. SCHONMAN: I will assure you, though, that we
14 have complied fully with FOIA.

15 JUDGE SIPPEL: Well, maybe that's the answer to my
16 question. I don't know. Do you understand my question?
17 Have I made that clear? I'm not trying to argue with you,
18 maybe I'm not saying it concisely enough. I want to know if
19 there's anything that you have in your trial preparation
20 materials -- I'm not talking about attorney work product --
21 I'm talking about information you received from third
22 parties, that is within the realm, the framework that you
23 got for purposes of trial preparation, that you have not
24 turned over to the other side, with the exception of
25 statements for which the informant's privilege have been

1 claimed.

2 MR. SCHONMAN: Your Honor, I can best answer this
3 way. When a FOIA request came in, we responded to it fully
4 under the law and provided everything that we had to turn
5 over, that the law required us to turn over. That is the
6 way that document requests are made in a hearing proceeding
7 pursuant to FOIA, and we've complied with that. I don't
8 know what else. If we're not required to turn over
9 materials, then we don't turn over materials.

10 JUDGE SIPPEL: Mr. Friedman, I don't think that I
11 have any authority to go beyond that.

12 MR. FRIEDMAN: I don't think he's violated FOIA.
13 We've got an action in the Court of Appeals that will tell,
14 in the District Court, that will tell whether he has or he
15 hasn't.

16 JUDGE SIPPEL: No, I understand that and I respect
17 that, really, but all I'm saying is that me sitting here,
18 trying to move discovery along to the best of my abilities,
19 I don't think I can go beyond what he's told me. He's said
20 that they've done everything they feel under FOIA, and I
21 don't have any powers beyond FOIA for document discovery
22 with respect to the Government. I'm stuck, in a sense.

23 MR. FRIEDMAN: Again, that's one of my problems
24 with all this extensive discovery. There may be documents
25 out there that may be relevant and I've got to try to figure

1 out where they are. They may be exempt from FOIA but they
2 may be useable in this courtroom and I've got to try my own
3 ways to try to find them.

4 JUDGE SIPPEL: What I'm hearing is that the
5 information that you'd like to have or may possibly like to
6 have is speculative. I mean, you don't know whether it's
7 damaging information or information which would assist your
8 case. You're just trying to find out. You're doing what an
9 attorney is supposed to be doing. You're trying to find out
10 all the information that focuses on the issue.

11 MR. FRIEDMAN: That's correct.

12 JUDGE SIPPEL: Again, I respect that, but I'm
13 simply saying, that situation can go on ad infinitum.

14 MR. FRIEDMAN: We're not proposing to go on that
15 much. We've set out a schedule, we've set out some dates
16 for you. We can be ready within the framework of those
17 dates.

18 JUDGE SIPPEL: Well, the dates you set out for me
19 were kind of elastic dates.

20 MR. FRIEDMAN: I believe we actually had specific
21 dates for a hearing, Your Honor. We were very clear about
22 this.

23 JUDGE SIPPEL: You're talking about early
24 December?

25 MR. FRIEDMAN: Yes, that's correct. We think we

1 will be ready by then. We know we'll be ready by then. We
2 have some very specific dates at page five and six of our
3 status, we laid out some specific timing for everything to
4 be done.

5 MR. FENSKE: Under the heading of Section 6 under
6 Timing.

7 JUDGE SIPPEL: Under timing, yes, assuming the
8 schedule is acceptable. Well, I'm not going to read it into
9 the record. I'm not trying to suggest that you haven't
10 acted in good faith when you'd be ready for trial, but I'm
11 not convinced from what you're telling me here today that
12 you have to wait that long to go to hearing on these issues.
13 I just don't see it.

14 I haven't been told in specific terms as to what
15 you're lacking, because the bulk of the Government's case,
16 I'm assuming, is going to be with Mr. Kay's documents and
17 the witnesses that you know about. Is that a fair
18 assessment?

19 MR. SCHONMAN: Yes.

20 JUDGE SIPPEL: So, what's falling in between the
21 cracks here is, you say, subject to a FOIA litigation. You
22 don't have any prognosis on when that might get resolved?

23 MR. FRIEDMAN: If we could only prod Judge Urbina
24 along, it would be helpful, but he has his own schedule.

25 JUDGE SIPPEL: Of course he does.

1 MR. FRIEDMAN: But, Your Honor, I think as we
2 indicated, three to four months of depositions, factoring in
3 the Sobel case, takes us right up to those time periods.

4 I think to try this back to back with Sobel would
5 be a burden, especially because we'll be, and I don't want
6 to speak for the Bureau, but they're stuck with the same
7 problem we are of trying it and briefing the Sobel case if
8 we go back to back.

9 JUDGE SIPPEL: The Sobel issue, to an extent,
10 could have been part of this case at one point, too, and it
11 was peeled off for good reasons. I don't see that that, in
12 and of itself, is a basis for holding back in the
13 preparation going forward on this case. Certainly, if
14 there's going to be conflicts with Sobel, I will address
15 those and listen to those and consult with my colleague,
16 Judge Frysiak.

17 But, on the other hand, I'm not suggesting that
18 the cases be tried at the same time.

19 MR. FRIEDMAN: Right, I understand that. I know
20 that while we prefer the dates we had, we had one round of
21 discussions with Messrs. Schonman and Kellett that they
22 modified some dates in November that were to us a little
23 less acceptable, but certainly acceptable dates, and I think
24 they're reasonable, and as well as to permit the Bureau --
25 and I hate to be nice to the Bureau -- but they have their

1 difficulties, and they're going to have to deal with this
2 round of depositions we take, as well. We'll have to work
3 with them on dates and all. Those are reasonable dates to
4 get all of this extensive work done.

5 JUDGE SIPPEL: Well, the Bureau has indicated that
6 they'd be ready to go to hearing on this in early September.

7 MR. FRIEDMAN: They had originally spoken to us
8 about November, and they told us in advance that they would
9 be moving up those dates.

10 JUDGE SIPPEL: Also from what you've represented,
11 I'm just not convinced that you need to take 30 depositions.
12 The fact that they have identified these people as sources
13 of information doesn't mean that you necessarily have to
14 take a discovery deposition.

15 Now, I'm saying that as a broad principle. Some
16 of these witnesses, as Mr. Schonman, I believe he has reason
17 to believe that these have already been deposed by Mr. Kay
18 in civil litigation and that some of the information there
19 would have bearing on this case, he believes. But, at one
20 point you did say you did read some of these depositions?

21 MR. FRIEDMAN: I read one or, actually read one or
22 two, one of which part of is in the record of this case.
23 That's it. I don't know all the others and I don't know
24 which ones and I have very little familiarity with what's
25 going on in California in this litigation, in the civil

1 litigation there. So, I don't know whether that's helpful
2 or not helpful. It's not a case I'm counsel for, and not a
3 case I've taken the deposition. I'll tell you off the top
4 of my head, I don't even know what the claims are in that
5 case.

6 JUDGE SIPPEL: Well, the only point that I'm
7 trying to make is that I don't think that just by virtue of
8 the fact that you've got 30 some odd names doesn't mean you
9 have to take 30 depositions.

10 MR. FRIEDMAN: I think we're going to take each
11 and every one of them. It's our inclination, is to deal
12 with everyone they've identified and any individuals that
13 they point out, we think we need to be prepared that way.
14 Again, our client is standing to lose a business that's
15 worth several million dollars. He needs to be defended.

16 JUDGE SIPPEL: I hear you and as I say, what I'm
17 trying to accomplish here has absolutely nothing to do with
18 trying to be critical of what anybody is trying to do to
19 defend Mr. Kay or even for the Government to get ready for
20 this case. There is a day of reckoning in a situation like
21 this, and it's got to be coming up soon.

22 I just don't see, even with what you've
23 represented to me with the scope of a lot of work that needs
24 to be done, that it needs to be taking all that long to get
25 this case ready for trial.

1 I am going to continue to take the dates under
2 advisement, but right now, my inclination, and I'll be very
3 frank with you, is to go along -- I came in here prepared to
4 set a hearing date for the 19th of August, but I am more
5 inclined to go along with the dates that the Bureau has
6 suggested. The reason I say that is for two reasons, one
7 because I thought that things would be, I thought that the
8 Bureau would be able to move more promptly with respect to
9 getting the deposition of Mr. Kay under way and completed.
10 The other factor that I'm hearing this morning that gives me
11 the concern is the scope of the 30 some odd depositions that
12 Mr. Kay feels that he has to take.

13 Do you have anything to say, Mr. Schonman or Mr.
14 Kellett, with respect to his deposition discovery? He's
15 saying that he wants to take 30 depositions or thereabouts,
16 based on the names that you gave him.

17 MR. SCHONMAN: I'm sorry, sir, your question?

18 JUDGE SIPPEL: Do you have anything responsive to
19 say to that?

20 MR. SCHONMAN: No.

21 JUDGE SIPPEL: You don't think there's anything
22 unreasonable about that amount of discovery?

23 MR. SCHONMAN: It's excessive, I believe.

24 JUDGE SIPPEL: Just by virtue of what, numbers, or
25 is this repetitive information he's going to get? What do

1 you believe?

2 MR. SCHONMAN: Excessive in terms of numbers.

3 JUDGE SIPPEL: Which would mean to me, then, you
4 think they're going to get the same information from 30
5 different people or essentially the same information?

6 MR. SCHONMAN: My colleague tells me that he's
7 questioning whether there were 30 names on our list.

8 MR. FRIEDMAN: You said there were 30 names on
9 your list. You said you had names. Some of them were
10 entities and some, we know other people who are in the same
11 category, and that's what it will add up to.

12 MR. SCHONMAN: Your Honor, to the extent that
13 there are additional names that Mr. Friedman is aware of, we
14 would like to know who they are?

15 MR. FRIEDMAN: You'll know them by, is it April 2
16 or April 9. I forget which date.

17 MR. SCHONMAN: Right, we're going to work out a
18 deposition schedule.

19 MR. FRIEDMAN: And we will work with you on that,
20 because we understand your own timing, and we have timing
21 problems of getting to Los Angeles and your budget. We'll
22 work those dates with you, we'll work the dates with the
23 witnesses. But, I'm sure that things will juggle, and we'll
24 juggle with you, Gary, and hopefully you'll help us with the
25 depositions and the subpoenas, to the extent you can.

1 MR. FENSKE: Your Honor, if I can emphasize one
2 point. At this point in time, we, quite frankly, cannot
3 knock anybody off our list. We have no valid basis to do
4 so, based upon the knowledge we have and know before us.
5 That's why we estimated the 30 individuals, because we can't
6 knock anybody off that list right now, based upon the
7 information that's been provided to us.

8 JUDGE SIPPEL: Well, you know, I still think with
9 a sharp pencil, a little bit of hard work and hard thinking,
10 that there are ways to do this, to get these numbers down.
11 I understand what your interest is. I'm just telling you
12 that I'm trying to get this case tried, that's what I'm
13 trying to do.

14 MR. FENSKE: Understood.

15 JUDGE SIPPEL: I'm sorry to be taking this much
16 time, but I don't see how I can cover all this information
17 and not take the time to do it. I'm a little bit concerned
18 about a September 22 starting date out in Los Angeles. I
19 don't want this case to overlap with the beginning of a new
20 fiscal year. So, I'm going to make it earlier than the
21 22nd, but I don't think this case needs to be tried for more
22 than two weeks.

23 That would assume two weeks of full trial out
24 there in Los Angeles, with or without Mr. Kay testifying out
25 there. My preference would be that he testify here, but

1 this case should be able to be open and shut down within a
2 two week period of time, as far as the hearing is concerned.
3 I would like to have an admission session here in
4 Washington, because unless I'm missing something here, I
5 think that the scope of the documentary evidence could be
6 pretty considerable. I think it would be a useful process
7 to have it on the record before everybody gets ready to put
8 the witnesses on. It would also save time with the
9 witnesses.

10 By going that route, I want to just warn you
11 upfront logistically, make a third set of the exhibits. If
12 we get the original and one introduced here, you're going to
13 want a third set to use out there with the witnesses.

14 There really isn't anything much more I can say.
15 If you would bear with me, I see that it's 11:30. I want to
16 just check these subjects that I had on my prehearing order,
17 the categories. Prehearing motions, all right, that speaks
18 for itself. I'm not encouraging that at all. There's been
19 such intense motion practice in this case, and I know that
20 this is not going to be a telling argument to make, but I'm
21 hoping I don't see too much of that. Depositions, we've
22 already talked about that.

23 Now, what about the expert? In the general
24 counsel's decision, there was a reference made there to
25 using expert testimony with respect to what the record

1 keeping requires. That was my recollection. Does anybody
2 have a sense? Did any party intend to use expert testimony
3 on that subject?

4 MR. FRIEDMAN: Your Honor, we do. The April 9 day
5 may be difficult for us to have the answer to you, but we
6 will use an expert in dealing with our business practices
7 and maybe more than one. I'm not sure at the moment.

8 JUDGE SIPPEL: The Bureau?

9 MR. SCHONMAN: The Bureau did not anticipate
10 having any expert witnesses, although we may be compelled in
11 a rebuttal case to bring in one. I guess it will
12 necessarily depend upon what Mr. Kay does.

13 MR. FRIEDMAN: Is that necessarily rebuttal type
14 testimony?

15 JUDGE SIPPEL: Well, I don't know. They'd have to
16 request it, they'd have to request it. Let me just say, if
17 you're going to put on an expert, you better have that
18 expert identified expeditiously, so that we can go through
19 all the other procedures for deposing.

20 MR. FRIEDMAN: Clearly, as you mentioned Rule 26
21 before, we need 26 or the equivalent. We'd want to depose
22 him in advance.

23 JUDGE SIPPEL: I'm trying to bring that to a head,
24 actually. I'm not trying to avoid that at all, clearly.
25 But, I mean, I'm going to exercise my discretion in terms of

1 cutting it off. I'm not going to permit a parade of experts
2 up here.

3 I think I know how the issue came up in the
4 context of how the case came back to me, and that had to do
5 with some of the statements that Mr. Fischel was making on
6 the record. If Mr. Fischel is going to be your expert,
7 you're going to try to qualify him as a person
8 knowledgeable, sufficiently knowledgeable for reliance in
9 this area, you know, that's fine. So be it.

10 But, if he's going to be proffered in that
11 context, then they have to have an opportunity to discover.
12 If you're going to go outside the Agency, then that's a
13 different kettle of fish, but you have to let us know.

14 MR. SCHONMAN: We will let you know.

15 MR. FRIEDMAN: Does that April 9 date hold, or are
16 we going to push that back?

17 JUDGE SIPPEL: No, that's going to hold. Whatever
18 you can't tell me on April 9, you let me know what you can't
19 tell me, but you better address it. If I'm not satisfied
20 with what I'm getting, we'll be back in here a few days
21 after April 9.

22 Stipulations, you've told me about stipulations,
23 and I agree with that, really, until you get closer to the
24 date of hearing. But, in connection with that, I want to
25 try and again emphasize that there's a way of taking some of

1 this information and reducing it to charts or summaries with
2 back up evidence. I know that's a hard thing to do, but if
3 the scope of the documents are going to be great, and yet
4 you're really only piecing together the same subject matter
5 that can be done in a linear form, it's going to be a
6 tremendous help. So, if that's in the cards, if that's
7 doable, I urge you to do that.

8 The document discovery, well, I'm back to that
9 again and the only thing I can do, Mr. Friedman, is have the
10 Bureau put their paper together in terms of exactly what it
11 is that they want from you. If it is something they've
12 already gotten from you and it's just an update of that
13 information, that should not pose a problem. If it is the
14 depositions in the state cases and they're not under seal,
15 that should not pose a problem. Now, anything else, I don't
16 know. But, if you go beyond that and it's going to cause
17 more motions practice here, I'm not going to look too kindly
18 on that. But, you are entitled, certainly, to have your
19 information updated in preparation for trial.

20 Frozen sworn testimony, Mr. Friedman, I know what
21 the Bureau's position is on that. Are you familiar with
22 that process?

23 MR. FRIEDMAN: Sure.

24 JUDGE SIPPEL: Are you prepared to use that to the
25 extent you can? What can you tell me about it?

1 MR. FRIEDMAN: I think our position is that we
2 would prefer to come on after and put our witnesses on.

3 JUDGE SIPPEL: You will come on after.

4 MR. FRIEDMAN: Yes, to put them on live for direct
5 examination. That would be our preference, to do live
6 direct.

7 JUDGE SIPPEL: It's faster, you know, if you put
8 them on with the frozen. It really is, it really saves a
9 lot of time. Let me finish what I'm saying for a minute.
10 If you don't give them the frozen sworn testimony, you're
11 going to have to give them a summary of what the witness is
12 going to say anyway, and the chances are they will have
13 talked, if not deposed -- I'm pretty confident they will
14 have deposed the witness, but at least they will have talked
15 to the witness ahead of time.

16 MR. FRIEDMAN: Again, since much of our case would
17 depend on how their case came in, I think we would prefer
18 the summary, then, the summary procedure, just because we
19 don't know how we're going to make our case until we see the
20 way the case in chief looks like.

21 JUDGE SIPPEL: Well, I would expect both sides to
22 work that out. I mean, I'm not going to ask the Bureau to
23 doing something more than you're going to commit to. But,
24 at a minimum, the summary is going to have to be required,
25 certainly will be required. I am going to require the trial

1 brief along the lines that, not along the lines of, but as I
2 have previously outlined that procedure in that order 95M-
3 106.

4 One thing that I didn't put in that order that I
5 will put in whatever order I issue after this will be the
6 exhibits have to be assembled, you know, with tabs and there
7 should be a cover sheet identifying what they are. If
8 you're going to use anything that is in the nature of asking
9 me to take judicial notice of, I, again, want that presented
10 as a hard copy document. You can move it into evidence
11 under judicial notice, but I don't want the record replete
12 with references to something you take judicial notice of,
13 but the document never comes in.

14 I'll spell it out with more detail. That's all I
15 have. I again want to urge you all, there's going to be a
16 lot of hard work. You're going to have one of these cases
17 out of the way, hopefully, the end of July. This case will
18 be out of the way before the end of September, as far as the
19 trial work is concerned. There's going to be a lot of
20 briefing. I ask you to please keep your motions practice to
21 a minimum.

22 Oh, there's one other thing that I didn't talk
23 about and that is the interrogatories. Why do you need
24 interrogatories, Mr. Schonman?

25 MR. KELLETT: We anticipate very few

1 interrogatories, Your Honor, and primarily, they're to
2 update the answers to our previous interrogatories.

3 JUDGE SIPPEL: I'm sorry to cut you off there, but
4 there's a very contentious interrogatory, Interrogatory 4.
5 You're not talking about revisiting that one, are you?

6 MR. KELLETT: If you direct us not to revisit it,
7 we won't revisit it. We also want to know the complete, one
8 of the things is, we want Mr. Kay to identify to us what
9 depositions have been taken in what suits in California.

10 JUDGE SIPPEL: Well, that could be done --

11 MR. KELLETT: That may be duplicative of the
12 document request. We just wanted to cover it. We may have
13 an additional interrogatory or two, but we're not talking a
14 big list of interrogatories.

15 JUDGE SIPPEL: Well, I mean, I don't look kindly
16 on interrogatories, but from what you're telling me there,
17 I'll let you ask five interrogatories, no subparts.

18 MR. KELLETT: Does that include that our previous
19 interrogatories are continuing in nature?

20 JUDGE SIPPEL: Yes, sir, they are.

21 Now, with respect to this loading data, the reason
22 I'm saying don't revisit that, it has been made abundantly
23 clear to me what the situation is, what Mr. Kay has provided
24 and that he cannot or I'm hearing that he cannot give you
25 anything more because there is nothing more to give. Am I

1 correct on that?

2 MR. FRIEDMAN: We've given, our position is they
3 asked for documents. We gave them what we had, and that is
4 our duty, is to give him what we have in our files, what
5 paper we have, what we have on our computers, we turned
6 over. That was the universe of the paper that is in the
7 filing system of Mr. Kay and his business enterprises, what
8 licenses.

9 JUDGE SIPPEL: Having heard that again, and I
10 thank you for being patient with me to repeat that, it's
11 going to have to wait until you get Mr. Friedman on
12 deposition and you're going to have to ask him a lot of
13 questions about that.

14 MR. FRIEDMAN: Actually, you mean Mr. Kay.

15 JUDGE SIPPEL: I'm sorry, Mr. Kay. I meant Mr.
16 Kay.

17 (Laughter.)

18 JUDGE SIPPEL: You know, after you've gone through
19 the deposition process and if you feel that you've made some
20 kind of an opening, I'll listen to it, but I'm not going to
21 take the time to go back and forth and back and forth on
22 this.

23 I think that, and I'll say this for the record,
24 and I'm sure Mr. Kay knows it, but this is a very serious
25 matter. If it ever does come to life that there has been

1 some, that we have been mislead in terms of getting this
2 information, that's going to be looked at extremely
3 seriously.

4 This case, as with all litigation cases, candor is
5 always an issue and there's going to come a time when Mr.
6 Kay is going to take the stand, and is well advised that
7 discovery on this loading data be full and complete and
8 accurate, as far as his records are concerned, before he
9 takes the stand.

10 MR. FRIEDMAN: Fine.

11 JUDGE SIPPEL: I can't say anything more. Is
12 there anything further that anybody else wants to say this
13 morning?

14 MR. SCHONMAN: Yes, Your Honor. With respect to
15 your last comment about candor always being an issue, I'd
16 just like to advise you that we anticipate filing a motion
17 to enlarge issues along those lines.

18 JUDGE SIPPEL: Well, I'll take whatever you file
19 and I'll look at whatever you file, but I'm giving you
20 advance notice here, I'm not going to change the standard of
21 the burden. But, I am trying, as best I can, to keep this
22 case on track with the issues that have been set.

23 I think I've expressed enough of my exasperation
24 with respect to timing on this trial in this case already
25 this morning. I don't want to take up anymore of your time

1 with that. So, I'll look at it. Go ahead.

2 MR. SCHONMAN: I just had one last item.

3 JUDGE SIPPEL: Yes, sir?

4 MR. SCHONMAN: Several minutes ago, you had
5 inquired of me as to whether we had turned over everything.
6 This was in regard to the FOIA matter. It occurred to me,
7 were you referring to Jenck's statements?

8 JUDGE SIPPEL: Jenck's or Brady. It's been awhile
9 since I focused on that, but if you're talking about
10 materials which might be helpful to Mr. Kay's case?

11 MR. SCHONMAN: I'm referring to the materials in
12 Section 1.362 of the Commission's rules. I just wanted to
13 make sure that my answer to your question was full and
14 complete.

15 JUDGE SIPPEL: I'm just going to go off the record
16 for a minute while I read this to myself.

17 (Discussion held off the record.)

18 JUDGE SIPPEL: Back on the record. All right,
19 I've familiarized myself now with 1.362. I'm very much
20 aware of that provision, and I'm assuming that's going to be
21 complied with. It's part of the procedures here.

22 MR. SCHONMAN: Yes, sir.

23 JUDGE SIPPEL: Is there any other reason why you
24 wanted to bring that to my attention?

25 MR. SCHONMAN: You had inquired whether we had any

1 statements or materials.

2 JUDGE SIPPEL: Yes, I did.

3 MR. SCHONMAN: I wanted to make absolutely sure
4 that I responded to your question accurately, entirely
5 accurately.

6 JUDGE SIPPEL: Well, you did. I think you did. I
7 don't see why not. You're going to meet the requirements of
8 1.362, if and when it comes to that.

9 MR. SCHONMAN: We will comply with all the rules.

10 JUDGE SIPPEL: Well, I would expect that, and I
11 wasn't suggesting that you weren't complying with the rules.
12 What I was trying to do was push things out a little bit
13 further and see if I could convince you to maybe come up
14 with something that may go a little bit beyond the literal
15 meaning of what you have to give them.

16 I'm not asking you to violate the law in turning
17 anything over to them. That's for sure, and that's what I
18 want to make darn sure about. But, if you're in a position
19 to voluntarily disclose relevant information to the other
20 side, this is the time to do it.

21 MR. SCHONMAN: I understand.

22 JUDGE SIPPEL: All right, and you understand where
23 I'm coming from?

24 MR. FRIEDMAN: Can we go off the record for a
25 second?

1 JUDGE SIPPEL: What's the subject matter you want
2 to talk about?

3 MR. FRIEDMAN: Something that didn't relate to
4 what was brought up this morning.

5 JUDGE SIPPEL: All right, let's go off the record.

6 (Discussion held off the record.)

7 JUDGE SIPPEL: Back on the record. I'm going to
8 let the record reflect that Mr. Friedman has requested a
9 possible meeting with me and Mr. Schonman in my chambers, in
10 my offices sometime next Tuesday, and I will be notified
11 further as to whether or not he wants to go forward with
12 that request.

13 My response has been that I will make myself
14 available, but only upon being given some reasonably advance
15 notification as to what the nature of the topic would be to
16 be discussed. Does that fairly represent everything?

17 MR. FRIEDMAN: That accurately represents it.

18 JUDGE SIPPEL: That's all the business there is to
19 conduct today. I will be back with an order. You know what
20 the scope of the dates are. I will give you specific dates
21 in an order that will come out very shortly. I apologize
22 again for the length of time that we've spent here this
23 morning, but I hope you go back with the understanding that
24 I am really trying as hard as I can to get this case ready
25 to be heard.